

A Client's Story Speaks for Itself

BY ROBERT GLASS

On the evening of Oct. 16, 2012, Lynn Martin, a school teacher, was driving home from work in Marietta, Georgia. As Lynn was entering an intersection with a green light, Earthalene Blue, who was driving in the opposite direction, attempted to make a left-handed turn in front of Lynn's vehicle, causing a t-bone collision. Lynn went to the emergency room that night. Approximately two weeks later, she began treatment with an orthopaedic surgeon for lower back and neck pain. Lynn underwent conservative treatment but was still in pain, especially in her neck. After an MRI study revealed three herniated discs in her neck, Lynn underwent an epidural injection, but it offered only temporary relief. The orthopaedist then recommended Lynn undergo a three-level fusion in her neck.

PREPARATION

Before we filed suit, we sent a statutory policy limits demand for the \$100,000 limits held by Ms. Blue through State Farm. Along with the medical records and bills, we included with the demand a medical narrative from the surgeon with a surgical estimate to support Lynn's claim for future medical expenses for the surgery. Shortly before the 30-day deadline, State Farm's claims adjuster called and explained they were "considering" paying the demand but had some questions about the surgical recommendation. Specifically, State Farm was interested in the degenerative disc disease notation in the emergency room records and how that affected the surgeon's opinion about Lynn's need for surgery as it related to the wreck. I happily accommodated State Farm's inquiry by extending the deadline for the demand—twice, and then arranged for the call with the surgeon. We even paid for the orthopaedist's time to step

away from his practice to field questions from the claims adjuster. In the phone conference, Lynn's orthopaedist stood by his narrative and discounted any argument that degenerative disc disease could be the cause for her need for neck surgery. Instead, he said that any degeneration in Lynn's neck, which was asymptomatic before the wreck, was made symptomatic because of the wreck, and thus caused her need for surgery. The surgeon stated that as a 47-year-old patient, he would have been surprised if she did not have some level of degeneration in her spine. The surgeon stated that Lynn's neck injury was dormant until forced by the trauma she sustained in the wreck.

Three days after the call with the doctor, State Farm offered \$22,500.00 for Lynn's claim. Given Lynn's medical bills of \$17,299.76 at the time and a surgical estimate of \$62,588.75, State Farm was offering a fraction of her special damages. We promptly filed suit.

Lynn continued to have serious neck pain despite her ongoing physical therapy. As the provider for three children at home, Lynn was understandably hesitant to take herself out of the workforce for three months to recover from surgery, not to mention the serious risks that can result from a fusion. When Lynn finally committed to having the surgery, she asked me for a recommendation for a second opinion. The second surgeon agreed that Lynn was a surgical candidate and also recommended a three-level cervical fusion. Lynn had the surgery in March of 2015. The gap in treatment between when Lynn last attended physical therapy and her second surgical recommendation was a significant amount of time, almost fifteen (15) months. The gap, of course, would play a large role in the defense arguments at trial.

DISCOVERY

Ms. Blue was defended by Sean Hannay of Sharon W. Ware & Associates. In discovery, Lynn recalled and disclosed a prior motor vehicle wreck in 2000 with corresponding chiropractic treatment for six (6) months, but she did not recall two emergency room visits in the 1990s for neck pain, which were discovered through her past medical records obtained by the defense.

Toward the end of discovery, the defense retained Dr. Berry Jeffries, a radiologist, to serve as an expert witness. Dr. Jeffries testified in his videotaped deposition that Lynn's neck injury predated the wreck. In Dr. Jeffries's opinion, disc herniations only develop after multiple years and cannot be symptomatic from trauma like a car wreck. Dr. Jeffries admitted in his deposition that, at last count, he had testified for Sharon W. Ware & Associates, State Farm's local captive law firm, no fewer than 600 times. Dr. Jeffries also testified that, in the course of his career, he testified for the defense 99.5 percent of the time and had earned more than a million dollars serving as a paid expert witness.

Our trial was specially set in front of Judge Irma Glover in Cobb County State Court and began on July 11, 2016. I tried very hard in voir dire to own our problems about the prior instances of isolated neck treatment in the 1990s and in 2000, the limited

property damage, gaps in treatment, and the issue of having an individual defendant. I also tried to test the argument that Lynn had almost a decade of no treatment whatsoever for neck pain between 2001 and 2012, when the wreck occurred. The panel had lots of experience with car wrecks, injuries from car wrecks and chronic pain. I was concerned that there may be some anti-lawsuit individuals on the panel that were not talking but, thankfully, that did not end up being the case.

TRIAL

At trial, the defense of the case focused on our client's credibility, which I think was a mistake. No, she did not disclose the treatment in 1993 and 1995, both of which were one-day emergency room visits for neck pain after trauma. At the same time, however, once we got the records obtained by the defense, which was in itself a battle, and reviewed them with her, she did recall the treatment and we supplemented our discovery right away. The defense tried to make our client out as a liar and a fraud and I think that backfired. Lynn is a very kind and likeable person and the jury commented after trial that they believed her forgetfulness was unintentional.

Both surgeons testified by video deposition and linked the need for surgery to the injuries

Lynn sustained in the wreck. We used a demonstrative of the surgery to help the jury understand the extent of the surgery (*See exhibit 1*). Judge Glover also allowed testimony about my referral of Lynn to the orthopaedists that treated her. I discussed that in voir dire and, thankfully, the jury didn't appear to think poorly of that. One way I tried to counter any suggestion of bias was to elicit testimony from Lynn on direct that the surgeon that performed the surgery was the same doctor I had seen for back pain in the past. Finally, as a big believer in visual advocacy, I used Courtroom Visuals, Inc. to create a demonstrative in the form of a timeline with Lynn's history of treatment to her neck (*See exhibit 2*). My hope was to allay any credence to the defense argument that this was a preexisting injury, which it most certainly was not. We also had a demonstrative made by Dan Cascio of Case Imagery make a high quality board of Lynn's neck after the surgery to show the hardware to the jury (*See exhibit 3*).

In effort to tell Lynn's story in context of her life and the limitations she has suffered as a result of the wreck, we put special emphasis on the damages witnesses. My law partner, James Robson, handled the damages witnesses masterfully by telling Lynn's story from before the wreck and after, especially after

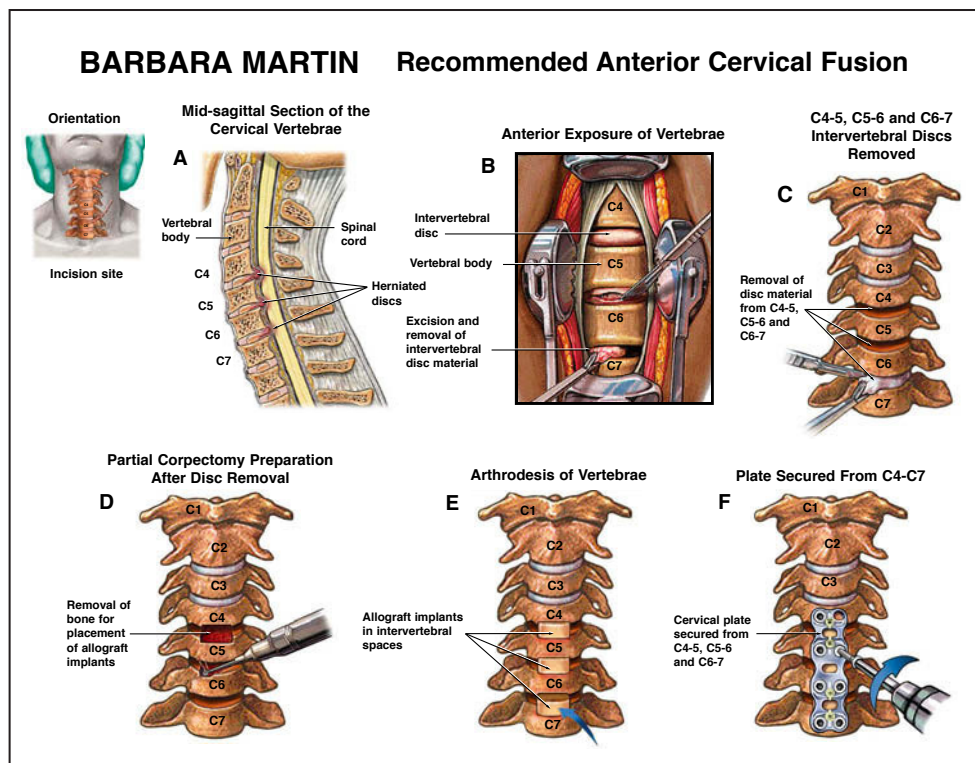


Exhibit 1.

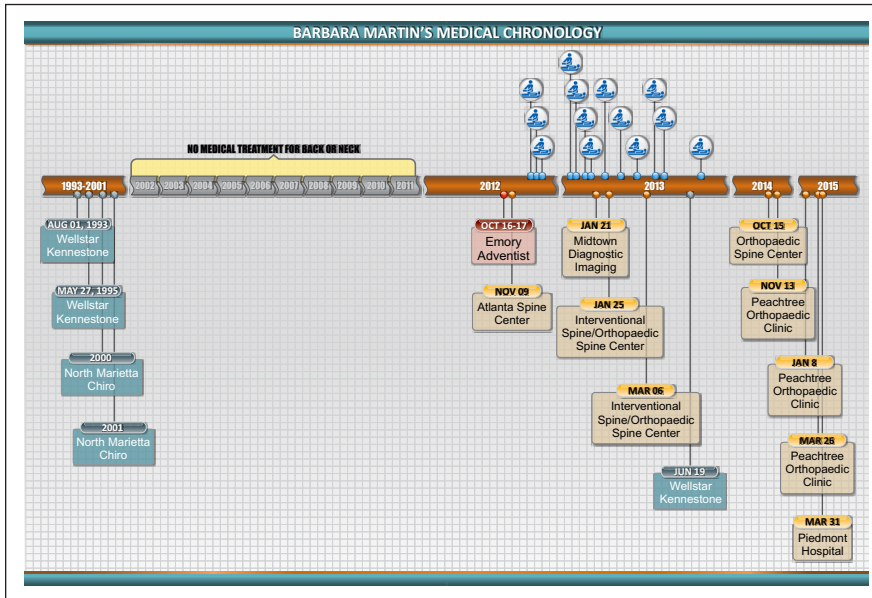


Exhibit 2.

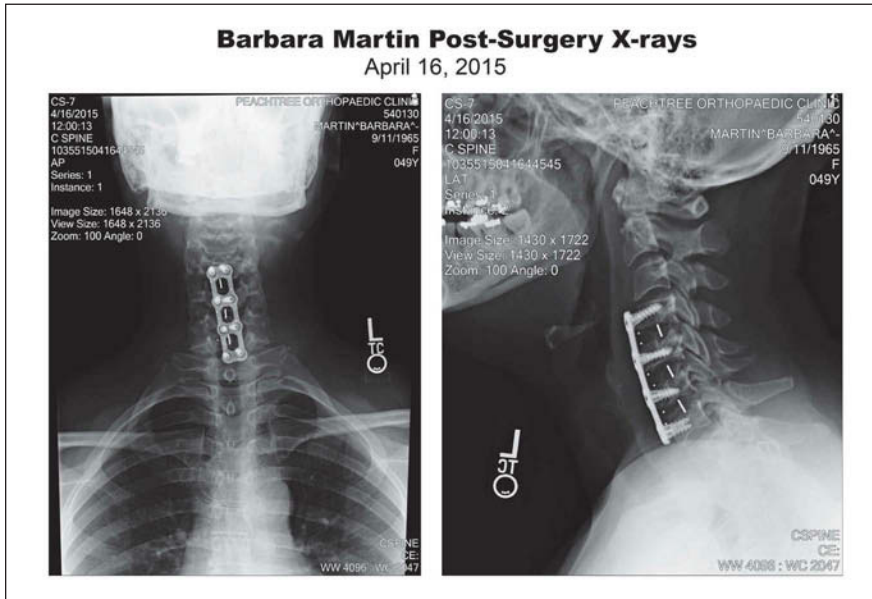


Exhibit 3.

surgery, through the eyes of her friends and family members.

Lynn held up well on cross but admitted that she was a “poor historian” as to her medical history. James did a fantastic job in first close setting up the defense for overplaying their hand, specifically by comments made by the defense in opening that there was some smoking gun to discredit Lynn’s case and credibility, which there was not. James hammered the defense on their false promises and factual inaccuracies. He refocused the jury on Lynn’s injuries through the eyes of the damages witnesses and highlighted the key medical testimony, including

the operating surgeon’s critique of Dr. Jeffries’s causation arguments.

I handled final closing. Lynn’s special damages were \$169,766.39. This figure incorporated Lynn’s medical bills and lost wages from her time away from work while recovering from surgery. The defense, perhaps mistakenly, admitted in response to our request for admission that they **were** responsible for Lynn’s special damages, so my argument in closing was that \$169,766.39 was the admitted baseline for the jury’s award, not considering non-economic damages. We blew these admissions up on big

boards and used them throughout trial over continuous objection from the defense. For non-economic damages, I offered a couple of frameworks for the jury to consider: One, the client’s wage during her time recovering from surgery for 16-hours-a day for life, which came out to \$1.6 million; two, \$10.00 per hour for 16-hours-a-day for life, which came to \$1.9 million; and three, awarding Lynn 10 times her special damages, also coming to \$1.6 million.

The jury got the case at 4:30 p.m. on the second day of trial. At 5:45 p.m., they asked to see our demonstrative of the client’s medical treatment, which showed the treatment in the 1990s, 2001, and then the huge gap until the wreck in 2012 and then the treatment from the wreck. We couldn’t send it back because the board wasn’t admitted as evidence, but I sensed that it was a good sign in that someone was fighting for us. Fifteen minutes later, they came back with the \$850,000 plaintiff’s verdict.

The jury foreperson and another member spoke to us afterward. Their first question was where the money came from, a question which I told them in closing they were not to consider. The jury apparently did not think Lynn was a liar and fraud as portrayed by the defense. They did think that she was not particularly careful with disclosing her prior medical history, but not intentionally so. When they came to a dispute on the verdict amount, the foreperson recommended taking each juror’s recommended verdict amount and divide it by 12 to get the median. The median was \$760,000, ranging from a low of \$300,000 to a high of \$1.5 million. Some jurors held out to get the number higher, thus resulting in the \$850,000 verdict. The defense has now filed an appeal, but we will continue on until Lynn receives full justice. ●

ABOUT THE AUTHOR



Robert F. Glass is a partner at Glass & Robson, LLC, where his practice focuses exclusively on representing individuals who have been seriously injured or killed by the negligence of others. He has been named one of Georgia Trend’s “Legal Elite” and to the National Trial Lawyers “Top 40 Under 40” and “Top 100 Trial Lawyers” lists. Robert can be reached at rfg@glassrobson.com.